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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/551,706 04/18/00 UBEL

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EXAMINER

ARNOLD III, T

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 06/06/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/551,706

Applicant(s)

Ubel et al

Examiner

Troy Arnold

Art Unit

3728



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Apr 27, 2001

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-60 is/are pending in the application

4a) Of the above, claim(s) 3, 24, 33-37, and 47-60 is/are withdrawn from consideration

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1, 2, 4-23, 25-32, and 38-46 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6

20) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restriction***

Claims 24, 34-37, and 47-60 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions I and II, and nonelected species II, III and IV, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7. It is noted that claims 3 and 33 are also written to either nonelected species II or III. Therefore claims 3 and 33 are also withdrawn from consideration.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "form a mushroom shape" is vague and indefinite; exactly what does this mean?

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura and also by International Patent WO 96/20884 to Cernohous. Nakamura teaches an apparatus comprising a pouch 10 with two ends and an interior, and a moisture sensitive product 3 having a continuous length, the product 3 being folded into a configuration comprising a plurality of sections in the interior along the length, each section comprising two folds and a segment spanning therebetween, the segment also extending along the pouch length. See Fig 13. Note that the product 3 is may be defined as "moisture sensitive" in the broadest sense of the word; the moisture content of the product 3 directly affects its function and usability. Also note that a given segment of the product 3 as it is shown in Fig 13 will extend to some degree along the pouch length. Cernohous teaches an apparatus comprising a pouch 10 with two ends and an interior, and a moisture sensitive product 22 having a continuous length, the product 22 being folded into a configuration comprising a plurality of sections in the interior along the length, each section comprising two folds and a segment spanning therebetween, the segment also extending along the pouch length. See Fig 1.

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Claims 2, 5-9, 13-15, 17-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura. Nakamura clearly teaches claims 2, 5, 7, 14, 15 and 17-20 in Fig 13. Regarding claim 6, the pouch is defined as being impervious in the Abstract. Regarding claim 8, item 14 may function as a compression device. Regarding claim 9, item 14 is located on the exterior of the pouch. Regarding claim 13, item 14 will also function as a sealing device. Regarding claim 22, see item 19.

Claims 1-10, 12-16, 25-28, 32 and 38-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Parker et al, US Patent No. 5,003,970. Regarding claim 1, Parker teaches an apparatus comprising a pouch 31 with two ends, a length and an interior, and a moisture sensitive product 14 having a continuous length, and being folded into a plurality of sections in the interior and along the length, each section comprising two folds and a spanning segment which extends along the pouch length. See Figs 8 and 13. Claims 2-10 are clearly met by Parker. Item 36 meets the limitations claimed in claims 8-10. Regarding claim 12, item 36 will clearly conform the shape of the pouch to the shape of the product. Regarding claim 13, item 36 functions as a sealing device. The limitations of claims 14-16 are also clearly met by Parker in Figs 13 and 15. Regarding claim 25, Parker teaches an apparatus 10 comprising a pouch 32 comprising an interior, and a compression device 36 which couples to the pouch first end, and has two opposing members, and which will shape the end of the pouch to the shape of the product. See Fig 11 or 15. Claims 26-28 and 38-41 are clearly met by Parker. Regarding claim 42, Parker teaches a closure apparatus 36 comprising a compression device comprising two opposing compression

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members (the curved arms of the device), and a sealing device comprising opposed sealing members (the flat pressing sections of the device) wherein the sealing members are movable between open and closed positions. Regarding claim 43, item 36 has a frame which couples the devices. Claims 44-46 are clearly taught.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura. It would have been obvious to one of ordinary skill in the art at the time the invention was made to move the suspension member 19 of Nakamura to either end of the pouch 10 for the purpose of better suiting the dispensing process to a given position or orientation.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parker in view of Ausnit. Parker teaches all the limitations of claim 29 except the female member receiving the male member so that the pouch is trapped between. Ausnit teaches a pouch locking system which has male and female members and which lock a pouch between the two. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the male/female sealing device into that of Parker in order to produce a tighter seal.


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Claims 11, 21, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker. Regarding claim 11, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate foam padding into the compression members of item 36 in order to prevent cutting the pouch 32. Regarding claims 21, 30 and 31, it would have been obvious to one of ordinary skill to attach a suspension member to an end of the pouch in order to hang the pouch for dispensing,

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Troy Arnold whose telephone number is (703)305-0621. The Examiner can normally be reached Monday through Friday from 9:00 am until 5:00 pm EST. Any questions of a general nature pertaining to the application can be directed to the group receptionist whose number is (703) 308-1148.

TGA

May 30, 2001

  
Paul T. Scowell  
Supervisory Patent Examiner  
Group 3700